

REMARKS

In complete response to the Office Action mailed on December 10, 2008, reconsideration and allowance of the above-identified application are respectfully requested. Claims 1-15 remain pending, wherein claims 1 and 15 are amended.

Initially, Applicant appreciates the Examiner's consideration of the recitation at line 13 of claim 1 of "at the certain position". The failure to underline this addition to the claim was the result of a typographical error. Accordingly, claim 1 presented above includes this claim element without underlining because it is believed to now be part of the claim.

Claims 1 and 15 are objected to for minor informalities. Claims 1 and 15 have been amended in the manner suggested by the Office Action and withdrawal of this objection is respectfully requested.

Claims 1-14 are rejected under 35 U.S.C. § 101 as not being directed to statutory subject matter. This ground of rejection is respectfully traversed.

Although it is respectfully submitted that independent claim 1 was directed to statutory subject matter, in the interest of expediting prosecution this claim is amended to recite that the method is performed by a video motion anomaly detector, thus the method of claim 1 is now tied to another statutory class, namely a particular apparatus. Accordingly, claim 1 is now directed to statutory subject matter. Claims 2-14 are directed to statutory subject matter by

virtue of their dependency from independent claim 1. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 1, 2, 9-12, 14 and 15 are rejected for obviousness under 35 U.S.C. § 103(a) in view of the article “Semantic Interpretation of Object Activities in a Surveillance System” by Lou et al. (“the Lou article”). Claims 3, 4, 7 and 8 are rejected for obviousness under 35 U.S.C. § 103(a) in view of the combination of the Lou article and the article “Visual Recognition of Emotional States” by Schwerdt et al. (“Schwerdt”). Claim 13 is rejected for obviousness under 35 U.S.C. § 103(a) in view of the combination of the Lou article and U.S. Patent No. 4,198,653 to Kamin (“Kamin”). Claim 5 is rejected for obviousness under 35 U.S.C. § 103(a) in view of the combination of the Lou article, Schwerdt and U.S. Patent No. 5,546,474 to Zuniga (“Zuniga”). Claim 6 is rejected for obviousness under 35 U.S.C. § 103(a) in view of the combination of the Lou article, Schwerdt and U.S. Patent No. 7,058,205 to Jepson et al. (“Jepson”). These grounds of rejection are respectfully traversed.

The rejections of claims 1-15 rely, at least in part, upon the Lou article. It is respectfully submitted that the Patent Office has not established that the Lou article is prior art with respect to the present application. Moreover, Applicant submits with this Reply Declarations under 37 C.F.R. § 1.131 establishing an earlier date of conception and diligence from just prior to the earliest possible disclosure date of the Lou article up until the filing of the British patent application from which the present application claims priority.

The present application claims priority under 35 U.S.C. § 119 to two British applications filed on November 18 and August 15, 2002. The copy of the Lou article provided by the Patent Office only indicates a copyright date of 2002, but does not indicate when this article was published during 2002. Thus, the Patent Office has not established that the Lou article is prior art with respect to the present application.

Attached to Mr. Evans' Declaration is a copy of the bibliographic data for the Lou article indicating that the current version was published on December 10, 2002, which is after the claimed priority dates of the present application. Applicant is unaware of an earlier publication date of the Lou article.

As discussed in M.P.E.P. § 2128:

A reference is proven to be a "printed publication" "upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it."¹

The Patent Office, however, has not proven that the Lou article was disseminated or otherwise made available prior to the August 15, 2002 priority date claimed by the present application.

The Lou article appears to have been published along with other articles in connection with the 16th International Conference on Pattern Recognition, which appears to have occurred on August 11-15, 2002. Applicant is not aware of

¹ M.P.E.P. § 2128, citing *In re Wyer*, 655 F.2d 221, (CCPA 1981) (quoting *I.C.E. Corp. v. Armco Steel Corp.*, 250 F. Supp. 738, 743, (SDNY 1966)).

whether the Lou article was presented at this conference or otherwise published at that time. Accordingly, the only publication date of which the Applicant is aware for the Lou article is the December 10, 2002 publication date. This publication date is after both of the priority dates claimed by the present application, and accordingly the Patent Office has not established that the Lou article is prior art.

Nevertheless, in order to avoid all doubt, attached is a Declaration by the inventor under 35 U.S.C. § 1.131 establishing conception of the inventor prior to August 11, 2002 and diligence in filing the British application that was accorded an August 15, 2002 filing date. Pursuant to M.P.E.P. § 715.07 II., the date of prior conception have been redacted from the attachments to the Declarations. Also attached is a Declaration under 35 U.S.C. § 1.131 by Mr. Clive French, the British patent attorney who prepared and filed the British patent application. Mr. French's Declaration establishes that diligence from just prior to August 11, 2002 up until the patent application was mailed to the British Patent Office on August 14, 2002.

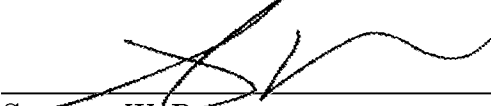
Because the Patent Office has not established that the Lou article is prior art and Applicant's have "sworn behind" the earliest possible publication date of the Lou article, the Lou article is not prior art with respect to the present application. Because all rejections rely at least in part on upon the Lou article, these rejections should be withdrawn.

If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket # 038819.55861US).

Respectfully submitted,

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